

REMARKS

The remarks below are numbered to correspond to the numbered portions of the office action.

1. Objections were posed to informalities in Claims 2–5 and 7–9. Claims 2–5 and 7–9 are amended to say "*The* planting machine" not "*A* planting machine" to refer back to the respective independent claims.

2. Objections were posed to informalities in Claim 7. Claim 7 is amended to say "further comprising a *frame*, wherein . . ." not "further comprising a *from*, wherein . . ." to correct a typographical error.

3. Applicant respectfully traverses the § 102 anticipation rejection over Kolk *et al.* [US3,872,805]. Kolk '805 is not a seedling planter. Kolk '805 does not disclose the subject matter claimed by applicants herein.

4. Kolk '805 does not disclose means for opening and for closing a furrow in the soil in combination with the other elements. Kolk '805 concerns "agricultural procedures is the practice of covering the earth with long and relatively wide strips of plastic material a few thousandths of an inch thick at the most . . .". Kolk '805 concerns the desire "to perform the planting operations directly through the sheets of plastic material". Kolk '805 teaches away from the invention claimed by applicant, because Kolk '805 concerns technology which it asserts "obsoletes the general practice of planting in conjunction with opening and closing a furrow." (col. 1, lines 41–43.)

The elements (94, 95) identified by the examiner are mounted on a rotor assembly and do not open a furrow but instead "is stabbed downwardly by the normal operation of the machine so that it pierces the ground level." (col. 1, lines 63–65.) The elements (67, 68) do not close a

furrow in the soil, but instead are "compacting wheels" which "have the function of pressing the earth together after the planting action has taken place." (col. 4, lines 10–12.) The element (131) in Kolk '805 is a transfer reel which receives seeds from a hopper 123, and does not contain "compartments being outwardly open for the reception of manually inserted seedlings" as claimed in Claim 1. The element (84) in Kolk '805 is a "a plurality of the receptacle sub-assemblies" which "are disposed at an even angular spacing around the axis of the shaft 81, and are pivotally supported between radially extending pairs of arms." It is not a conduit means as shown and described in funnel-shaped plant guide of the applicant's disclosure.

5. Applicant respectfully traverses the § 103 obviousness rejections for the reasons stated below, and requests reconsideration thereof. Most inventions arise from a combination of old elements and each element may be found in the prior art, but mere identification in the prior art of each element is insufficient to defeat patentability of the combined subject matter as a whole. In re Kahn, 441 F.3d 977 (Fed. Cir. 2006). Instead it is necessary to articulate a basis on which to draw the conclusion that it would have been obvious to make the claimed invention, which in practice requires explanation of the reasons one of ordinary skill in the art would have been motivated to select the references and combine them to render the claimed subject matter obvious. Id.; accord; In re Rouffet, 149 F.3d 1350 (Fed.Cir.1998) ("When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references.").

6. With respect to Claims 3, 6–11, the remarks above concerning Kolk '805 are incorporated by reference. As explained above, Kolk '805 in fact teaches *away* from the present invention because it was intended that Kolk '805 "obsoletes the general practice of planting in conjunction with opening and closing a furrow", whereas in contrast the present invention

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includes a means for opening a furrow. Willames [US 6,352,986] concerns "transplanting seedlings directly from a propagating and growing tray directly into a prepared ground planting position." It concerns "apparatus for transplanting plugs comprising seedlings and propagating medium from a tray including a plurality of plug retaining cells into a prepared ground planting position".

Element 28 in Figure 4 of Willames '986 relates to "a blast of high pressure air from air supply tube" which is "directed vertically downwards over the plant plug to force the plant off the prong (26) and into the drop tube (27)". It does not augment the release of seedling from rotatable drum at a predetermined point in its rotation to facilitate even release of seedlings at said point of release.

7. With respect to claim 4, the remarks above concerning Kolk '805 and Willames '986 are incorporated by reference. Bouldin *et al.* 5,860,372 does not relate to planting seedlings in the ground, but instead concerns "relates generally to machines used in the nursery industry for taking seedlings extracted from a first seedling tray or "plug tray" and transplanting them into yet another second growing tray generally having a greater area of separation between the newly transplanted seedlings than the first plug tray from which they were extracted in order to encourage continued unimpeded growth of each individual seedling." Bouldin '372 does not disclose a jet of air. Bouldin '372 does not disclose repositioning a jet of air. Boulding '372 does not disclose adjusting the point of seedling release by repositioning a jet of air. Figures 6A, 6B in Bouldin '372 discloses a mechanical gripper apparatus for dealing with "plugs", different in kind from the seedling planter of the present invention.

8. With respect to Claim 5, the remarks above concerning Kolk '805 are incorporated by reference. Bouldin '372 does not relate to planting seedlings in the ground, but instead concerns

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and "relates generally to machines used in the nursery industry for taking seedlings extracted from a first seedling tray or 'plug tray' and transplanting them into yet another second growing tray generally having a greater area of separation between the newly transplanted seedlings than the first plug tray from which they were extracted in order to encourage continued unimpeded growth of each individual seedling." The element 107 in Bouldin '372 is identified therein as "gripper fingers" (col. 9, line 5), not as a conduit.

9. With respect to Claim 12, the remarks above concerning Kolk '805 and Williames '986 are incorporated by reference. Cochran [3,379,147] is directed not to a *seedling* planter, but instead to "an agricultural machine to plant elongated roots and more particularly to such a device that is particularly adapted to plant the vegetatively reproducing portions of the perennial herb mint." (col. 1, lines 7–10.) Cochran '147 teaches *away* from combination with machines not used for planting mint, explaining that "[b]ecause of the peculiar nature and requirements of each specie of plant, machines adapted to plant one are generally not usable, at least effectively, to plant another." Cochran '147 discloses a planting wheel (14) with studs along its periphery, which studs in operation seize a portion of mint root from a hopper.

10. Claims 13 through 17 are new. These new claims define in different language the differences described hereinabove between the subject matter sought to be patented and the references identified by the examiner.

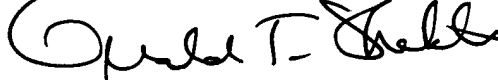
Applicant hereby requests reconsideration and reexamination thereof.

With the above amendments and remarks, this application is considered ready for allowance and Applicant earnestly solicits an early notice of same. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to call the undersigned at the below-listed number.

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Respectfully submitted,

WELSH & KATZ, LTD.

A handwritten signature in black ink, appearing to read "Gerald T. Shekleton". The signature is fluid and cursive, with a large initial "G" and a stylized "S" at the end.

Gerald T. Shekleton

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